RUSSELL CHECKMATED

BLOCKED IN HIS ATTEMPT TO CUST MAJOR WILSON

The Supreme Court Decides the Railway Commission Case in Favor of Caldwell. Final Judgment Entered in That Court and Execution Issued Immediately at Russell's Request-A Wit of Error From the Federal court Blocks His Game-The

Piedmont Bank Case (Special to The Messenger.)

Raleigh, N. C., December 23.-The supreme court, Justice Douglass delivering the opinion, filed a decision this afternoon in the case of Caldwell against Wilson, involving title to the railway commissioner chairmanship. The decision is just as expe-

is no doubt that the governor and Caldwell knew two days ago what the result would be. The opinion is of immense length. The principal feature of it refers to the refusal of Judge Robinson to submit any issues to a jury. The court says this refusal was proper, as there were no disputed facts before the court. The opinion adds:

"It is not denied that the governor notified the defendant to appear and answer; that he did so appear and answer; that the governor subsequently suspended him, giving him written notice of such action and appointed Caldwell: that the latter duly qualified, demanded possession of the office, was refused by Wilson and brought suit. There was absolutely nothing to go to a jury unless the court went behind the action of the governor, which we think could not be reviewed by the court. Suspension by the governor is not a final determination of the defendant's rights, which must be ultimately passed on by the legislature, sitting somewhat in the nature of a court of impeachment. If it should determine that the defendant had been be at once reinstated and be entitled to his full pay from the time of his the highest motive of public policy, to powers and responsibilities in the to act and act promptly, necessarily compelled to hold that such official action was, under the circumstances, due process of law. Even if it were proper, the governor would have no power to direct an issue like a chancellor. As to trials by jury, it has been held from in the determination of many matters of fact the intervention of a jury was neither necessary nor possible, as, for example, applications for receivers, injunctions and proceedings in contempt and even in actions at law there are many matters of fact which must be found by the court below and are not even reviewable in this court. Every time a judge below takes a case from the jury and directs a verdict he practically deprives the party of trial by jury, and yet that he can so direct a verdict against a party on whom rests the onus has been held by a long line of decisions by this court from Wittkowsky against Wasson,, 71st N. C. reports, to Spruill against the Inman Company, 120th N. C. reports. Offices are only the subjects of property so far as they can be so in safety to the general interest involved in discharge of their duties. Chief Justice Ruffin so held in the case of Hoke against Henderson. It is doubtful if he ever contemplated the extent to which the matter of claim of title to public office would be carried, and least of all that so extreme construction would be invoked to bring the tenure of high official positions within the operation of the amendment to the federal constitution primarily adopted for the protection of the colored race.

"The statute under consideration does not interfere with any vested right, nor does our decision conflict with that in Hoke against Henderson. The power of the governor to suspend and the reserved right of the legislature to remove were assented to by the defendant when he accepted office. The railway commission is merely an administrative board created by the state for carrying into effect the will of the state as expressed by its legislature. The power of suspension rests in the governor's hands, and when exercised in an orderly manner, is not reviewable by the courts. Whether the action | Wake county is situated. But there is of the governor was justified by the facts, which he alone could find, is not for us to say. The defendant waived his right to trial by jury by his acceptance of the commission on the face of which the fateful words of the cre-

ative act were written. "The judgment must, therefore, be affirmed, but in view of the public interests involved we deem it proper not to remand the case, but to enter final judgment in this court. This action is taken on motion of counsel made without objection in open court upon the hearing of the case and under authority of Section 957 of the Code. Judgement is, therefore, entered that Caldwell is entitled to the office of railway commissioner; that Wilson be ousted therefrom and that Caldwell be placed in possession of said office, together with all its records and other appurtenances thereunto belonging."

CHIEF JUSTICE FAIRCLOTH DIS-SENTS.

Chief Justice Faircloth filed a dissenting opinion. In view of what has occurred in the "ed for contempt, as he appears to have

railway commission case the dissenting opinion of Chief Justice Faircloth is of unusual interest. In it he says:

"Thus we see the governor suspends whenever he deems proper and the legislature removes ait its will and pleasure on ex parte proceedings, Commissioner Wilson having no opportunity to be heard. This proceeding is at least a novelty and, so far as I can remember, without precedent, certainly

in North Carolina." He says the suspension of the defendent was no executive fuction and he sees no reason why the secretary of state could not as well have been the agent of the legislature with directions for the cause mentioned in the act to suspend the governor from his office until the legislature could have an opportunity to remove or restore as they might chose to do without any hearing from him.

EXECUTION ISSUED.

Very soon after the filing of the opin-Governor Russell went over to the supreme court room and Attorney W. H. Day asked Clerk Kenan for an execution of the judgment of the court. This was soon signed by Justice Clark and was directed to the sheriff. Day took it and told Clerk Kenan he would be responsible for its delivery to the

This quick work was to shut off Railway Commissioners J. W. Wilson and Otho Wilson from obtaining a writ of error from the United States supreme court until after Caldwell and Pearson were in office, but neither of the Wilsons is here, nor is Clerk Brown, of

the commission. Attorneys Spier Whitaker, J. C. L. Harris and R. O. Burton were at the supreme court, read the decision and did some hustling for their clients, the

A WRIT OF ERROR.

The fact that the attorneys of the Wilsons had lost no time was made plain when a writ of error was issued

and copy of it filled for the governor, attorney general, Pearson and Caldwell. Following is the text of this writ: "The President of the United States to the Honorable Judges of the Supreme Court of North Carolina, Greeting: "Because in the record and proceedings and also in the rendition of a judgment

of pleas which is in said supreme court before you or some of you, being the suspended without just cause he would highest court of law or equity of said state in which a decision could be had in the suit, wherein the state of North Carolina on the relation of L. C. Caldsuspension. The duty of suspension well is plaintiff and James W. Wilson was imposed upon the governor from is defendant, wherein was drawn in question the validity of a statute of or prevent danger to the public interests, on the ground of their being repugnant to which might arise from leaving such the constitution or laws of the United States, and the decision was in favor of such, their validity, a manifest error hands of men legally disqualified. As has happened to the great damage of the governor was, therefore, by the said James W. Wilson, as by his comletter and spirit of the law, required plaint appears. We being willing that the error, if any hath been, should be duly corrected and full and speedy upon his own findings of facts, we are justice done to parties aforesaid, in this behalf do command you if judgment be therein given that then under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same to the supreme court of the United States together with this writ, so that you have the same at Washington on January remotest times that this right did not 20th next in said supreme court that apply to equitable proceedings and that the records and proceedings aforesaid being inspected, said supreme court may cause further to be done therein to correct that error, and what of right and according to the laws and customs of the United States should be done. "Witness, Hon. M. W. FULLER,

> Chief Justice of said Supreme Court this 23rd December 1897. N. J. RIDDICK. [Signed.] Clerk of the United States Circuit

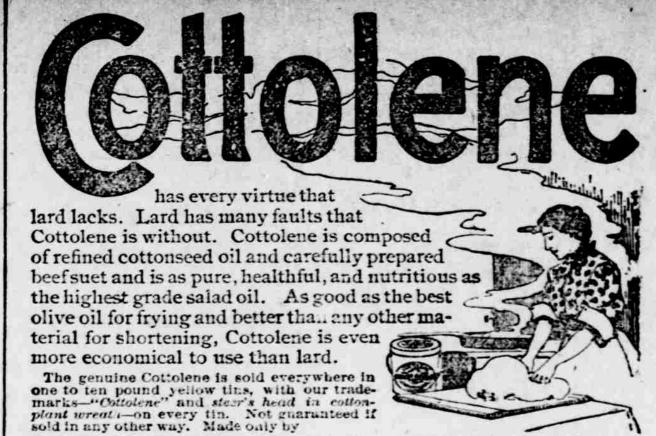
Court for the Eastern District of North Carolina. "Allowed by W. T. Faircloth, Chief Justice of the Supreme Court of North

The moment this writ of error was filed in the supreme court here it was binding, just as if notices were personally served. It is really an appeal to the United States supreme court, which the Wilsons told your correspondent

weeks ago they intended to take, It is the talk tonight that the governor was completely checkmated this evening in this case. It is said that his appointees expected Sheriff Jones to open the door of the railway commission office; but the sheriff knew that would be contempt of the United States supreme court. It was at one time said that there would be more developments and that before midnight Pearson and Caldwell would be inside the commis-

PIEDMONT BANK CASE.

The supreme court in the case of State Treasurer Worth against the Piedmont bank and others, on appeal by W. E. Walton, receiver, finds in favor of the treasurer and A. D. Cowles, his receiver. The opinion says that ordinarily a motion for a receiver must be made before the resident judge of the district or one assigned to the district of holding the courts thereof by exchange, at the option of the mover, or at most, if a motion for a temporary receiver is grantetd by any other judge than one of those just named, the order must be made returnable before one of such judges. But the acts of 1891, chapter 55, as amended by the acts of 1893, chapter 478, give the state treasurer the right to apply for receiver in Wake county. This means he can apply to a judge holding courts in the district in which nothing in the act which by just construction gives the treasurer exclusive right to institute proceedings for a receiver, nor which takes away the right of any creditor, by a general creditors' bill, to begin an action for that purpose. The only inquiry is as to which proceedings attained priority, as only one can be tolerated. The court will take notice of fractions of days to decide as to such priority. Judge Robinson mode the temporary order for a receiver in the treasurer's case at 9:45 o'clock a. m., December 3rd, and at 6:45 o'clock p. m., the same day, Judge Hoke appointed a temporary receiver in a suit brought by Webb and others. The court which first takes cognizance of the controversy is entitled to retain jurisdiction until the end of the litigation, to the exclusion of all interference by other courts of concurrent jurisdiction. As Judge Robinson made the first order he retains jurisdiction. Walton was, however, properly not punish-



THE N. K. FAIRBANK COMPANY, Chicago. St. Louis. New York. Montreal.

acted in good faith and had the au- forth the first of the year in a new thority of an order of the court. It is now his duty to obey and deliver over the assets to Receiver Cowles, appointted by Judge Robinson, and Judge Robinson's order is in all respects affirmed."

J. A. Perkins, of Antiquity, O., was for thirty years needlessly tortured by physicians for the cure of eczema. He was quickly cured by using DeWitt's Witch Hazel Salve, the famous healing salve for piles and skin diseases. R. R.

TO EASE THE MONEY MARKET

Sacretary Gage's Efforts to Prevent Financial Disturbances from Heavy Payment to the Government by the Union Pacific

Washington, December 23.-Assistant Secretary Vandelip, in speaking of the heavy payments by the government on January 1st, said:

Secretary Gage intends that there shall be as little disturbance as possible in the money market as a result of the payment of the principal and interest of the Union Pacific railroad bonds which mature January 1st. The amount of the principal of these bonds | dier in the late war, the back authority exercised under said statute is \$29,902,000 and the interest due thereon \$897,000. Up to last night \$10,195,120 of these bonds had been presented for payment and the treasury drafts to the amount of \$8,350,173 had been issued and sent out from the treasury. This represents the actual cash payments made up to date. There were to last night \$2,143,800 proceeds of redeemed bonds held in the treasury to secure circulation of national banks. Checks representing the actual cash payments already made and to be made between now nd the 27th will be available on that date in the banks. It is probable that the amount of cash payments to that da'te will reach \$15,000,000. On the same day the re-organization of the Union Pacific railroad will pay into the treasury the sum of \$8,538,401 and in order to guard further against any disturbance of the market Secretary Gage has arranged that \$4,000,000 of this amount shall be deposited in the National City bank, of New York, upon bonds being turned over to the government for security. The balance, \$4,-538,401, will represent the actual amount withdrawn from the money market and paid into the sub treasury

at New York. "The whole amount of bonds falling due on January 1st, will of course, not be presented by that time. There is usually a certain percentage which is slow in coming in, depending mostly upon the condition of the money morket. If this is easy, holders of bonds prefer to let the money, for safety, remain with the government and if the price of bonds is high, there is also a tendency to present them slowly for redemption. Such is the case at this time. There has been a congestion of currency at the money centres and except within the last week or ten days the money market has been exceedingly easy. Bonds to the amount of \$7,350,-000 are now held as security for special deposits in national banks on account of the purchase of the Union Pacific railroad, and to this extent there will be no actual money transaction. It will be seen, therefore, that the measures taken by the secretary will, so far as the redemption of the bonds is concerned and the payment to the government of the next instalment of the purchase price of the Union Pacific railroad compay, prevent any disturbance of the

money market on these accounts. "The last payment to be made to the government on the Pacific railroad account will be Jnuary 6, 1898 and will amount to \$8,538,401."

Mrs. Mary Bird, Harrisburg, Pa., says: "My child is worth millions to me; yet I would have lost her by croup had I not invested twenty-five cents in a bottle of One Minute Cough Cure.' It cures coughs, colds, and all throat and lung troubles. R. R. Bellamy.

Red Springs News (Correspondence of The Messenger.)

Red Springs, N. C., December 23. Last Monday night a chartered organization known as the "Red Springs Land and Improvement Company,' held its first meeting and elected the following officers: President, R. W. Livermoore; vice president, W. F. Williams; secretary and treasurer, A. T. McCallum. The other members are Dr. J. L. McMillan, J. G. Williams, of Red Springs, and J. A. McKoy, of Richmond county. This company starts out well and has already a number of valuable tracts of land and improved town property for sale and exchange. It will also run telephone lines to various points in this and

Richmond county. Rev. W. G. Vardell, of James Island S. C., father of President C. G. Vardell of Red Springs seminary, lies critically ill at Davidson College, where he is now on a visit. Mr. Vardell, visited our town a few months since and left hale and hearty, and the news of his sickness is both a surprise and regret to his many friends here. His family have

been summoned to his bedside. As the holiday season approaches our town has assumed a business air that brings cash to the merchant and joy to satisfactory. The many lumber mills in this section will close down next Friday, but owing to the rush of orders. the shut down will last only a few days. The seminary faculty and students will depart for their respective homes on the 23rd inst., to return on the 3rd

of January '98. Our local paper, the Citizen, will come

Several residences are now in course of erection, with more to follow. Work | was to assess the amount of the damon the new Episcopal church will begin | ages. The amount allowed is consid-1st of January next.

ton last Sunday. Rev. J. D. Moore had sought to settle the question without a a good protracted meeting at Lumber | commission for \$425,000. The award Bridge last week.

Mr. and Mrs. W. H. McKinnon celebrated their ciler wedding last night. A number of relaties and others were Several northerners are at Hotel

Townsend to enjoy our mild climate and hospitality. Others are expected soon. Several have sent mistletoe, holly, long leaf pine, cones, etc., north | London for the last eleven years. At recently. Your excellent paper is popular in

this section and ranks among the best. Success to it and merry Christmas | seizure by the United States steamer

frightfully burned on the face and neck. Pain was instantly relieved by De-Witt's Witch Hazel Salve, which healed the injury without leaving a scar. It is the famous pile remedy.-R. R. Belianiy.

A Norwegian Woman Gets a Pension

Washington, December 23.-A pension has been granted to the widow of Knud Knudsen, a solpay of which aggregates over \$4,000. The man is a native of Norway and was married to the woman who now gets the pension, in 1858. In connection with the allowance of the claim, the pension

office makes the following statement: "On August 31st, 1894, thirty one years after the soldier's death, the widow who has never left Norway, applied for a pension. Under the present laws she has title and the claim must be allowed, granting arrears of pension from the date of the soldier's death, making the first payment amount to between \$4,000 and \$5,000.

"You need Cod Liver Oil, you say but think you can't take it? Try "Mor rhuvin" a perfect "Wine of Cod Liver Oil." You get all the virtu of the oil, without the disagrecable effects. Sold by J. C. Shepard, J. H. Hardin and H. cent. and other charges the total reach-L. Fentress.

Denial of Atrocities in Guatemala Washington, December 23.-The statements recently published about the shooting of political prisoners in Guatemala are without foundation, according to reports received by the Gautemalan minister at Washington. They are, he said today, a repetition of the same stories manufactured by the agents of the rebels defeated last October. Instead of committing atrocities, the government, he said, has shown a great leniency and consideration for the rebels. Private dispatches say that an amnesty will soon be accorded, in view of the actual peaceful condition of the country.

Hart's Emulsion of Cod Liver Oil if faithfully used, is a specific in the treatment of weak lungs, Consumption Bronchitis, etc. Leading physicians re commend it. Sold by J. C. Shepard, R. H. Hardin and H. L. Fentress.

To Corner May Wheat

Chicago, December 23.-The possibility that Leiter and Armour will pool their interests to corner May wheat is stirring traders on 'change. The Post says: "George French, operating for the Leiter crowd, has piled up a line of at least 4.000,000 bushels of May wheat, according to reports from the floors. Armour's radical change of front in bulling May wheat is common knowledge. It is equally well known that Armour has a pyramid of May wheat bought, which is supposed to come close to the Leiter holding. As if to emphasize the bull talk, both Armour's and Leiter's men bought wheat today. Armour's movements are closely veiled but Leiter's engineers make no secret of their dealings in May wheat. Already that option is regarded as being as dangerous for the public to handle as a stove lid at white heat."

When a man is suffering with an aching head, a sluggish body, when his muscles are lax and lazy, his brain dull, and his stomach disdaining food he will, if wise, heed these warnings and resort to the right remedy, before is too late Parker's Sarsaparilla the "King of Blood Purifiers" makes rates the liver—purifies the blood and and declined to receive the censure and RHEUMATISM. fills it with the life-giving elements of admonition that had been prepared for the food. It is a wonderful blood him and said that before he would give | NEURALGIA. maker and flesh builder. Sold by J. C. up his beliefs he would give up his call-Shepard, J. H. Hardin and H. L. Fen-

Judge Parson to go on the Inter-State Commerce Commission

Washington, December 23.-It is believed that the president has decided to appoint Judge Paxson, of Pennsylvania, as member of the inter-state commerce commission to succeed Colonel William R. Morrison, whose term will expire in January. The president today informed Senator Deboe, of Kentucky, who called upon him in the interest of Mayor Todd, of Louisville, stroyed property worth more than \$500. that the position was promised and it | 000. The fire was started by the explois thought that Judge Parson is slated for the place.

"I don't know, there may be others' he said, but I have used "Parker's Tolu Cough Syrup in my family and would not be without it." He knew better than to buy the inferior preparation the small boy. On the whole, trade is | that was being urged upon him. Parker's Tolu Cough Syrup has no equal. It will immediately relieve any cough or Cold, Whooping Cough, Sore throat, Hoarseness, Croup, Bronchitis and kin dred ailments. Contains no injurious ingredients, is pleasant to take and a safe remedy for children. Sold by J. C. Shepard, J. H. Hardin and H. L.

DAMAGES AWARDED

British Seal Fishers for Seizure of Their Vessels by the United States Goverment. The Decision of the Commission Received at the State Department

Washington, December 23.-The findings of the British-American commission, chosen to assess the damages for seizure of British ships in Behring sea have been received by the state department and the British embassy. The strictest reticence is maintained, however, on the general character of the finding, though it is admitted that th total award against the United States is \$464,000, which includes principal and interest. A separate statement of the award divided into principal and interest is refused at this time. In order to avoid misapprehension it should be understood that the finding against this government is no surprise, that being a certainty under the finding of the Paris court of arbitration that the United States had no right to close Behring sea against foreign ships. The international commission's only duty ered to some extent a vindication Rev. D. W. Fox preached in Lumber- of the state department, which had now made exceeds this sum considerably and besides this there will be the expense of the arbitration and also the possible establishment of some unfortunate precedent as to the obligation of the United States to pay estimated

or prospective damages. The controversy has occupied the attention of the authorities here and in the outset the tone of controversy was very belligerent, suggesting a possible resort to arms. This was following the Corwin, of the British sealers Carolina and Thornton, on August 1st, 1886. The Miss Allie Hughes, Norfolk, Va., was | facts of the seizure were not known until some time later and in the meantime the Corwin had taken the Onward and the Favourite.

The same policy of seizure and confiscation occurred during the next sealing season, despite the protests of Great Britain, the United States ship Richard Rush taking the Sayward, Grace, Anna Beck, Dolphin, Alfred Adams, Triumph, Juniata, Pathfinder, Black Diamond, Lily, Ariel, Kate, and Minnie while the United States cutter

Bear took the Ada. The claims for the seizure took a wide range, beginning with the value of vessels and outfits and including not only the value of seal skins confiscated, but also the value of the skins which might have been taken if the ships had not been seized. This last feature of prospective damage caused the main contention. In the case of the each British ship, the largest item was so estimated on the future catch. For instance, in the case of the Carolina, the claim for the ship was only \$4,000, while that for skins which might have been taken that year if she had not been seized. was \$16,667. Each ship estimated a prospective catch of from 3,500 to 5,000 skins, the value being from \$3.50 per skin in 1887 and \$12.25 in 1889. The total of the claims, without interest amounted to \$439,161 and with interest at 7 per

ed \$786.166. The only official statement that could be secured here of the judgment reached by the commissioners is contained in the following announcement given out at the state department this after-

"The award of the Behring sea claims commission has been filed in the department of state. The claims as presented by the British government to the commission on account of Canadian vessels seized in Behring sea aggregated with interest, \$1,500,000. These included under the claims treaty, several cases not embraced in the settlement proposed by Secretary Gresham. The award now made amounts to \$294,191.91, to which is to be added interest which will increase the total about 50 per cent. The award is final and disposes of all cases before it. Payment under with Creasote and the Hypophoshites the treaty must be made within six months."

It is easy to catch a cold and just as easy to get rid of it if you commence early to use One Minute Cough Cure. It cures coughs, colds, bronchitis, pneumonia and all throat and lung troubles. It is pleasant to take, safe to use and sure to cure. R. R. Bellamy.

Pelted With Rotten Eggs

Kansas City, Mo., December 23 .- A special to The Star from Guthrie, Oklahoma says: Colonel D. F. Stiles, of the Oklahoma national guards, was pelted with rotten eggs llast night at the depot while about to board a train for Oakley. The assault was made by four men who stood in the shadow of the depot building. Colonel Stiles was bespattered from head to foot and was compelled to return to his home. His assailants escaped. The affair is said to be the result of bitter feeling among members of Company "A," Oklahoma national guards, in which Colonel Stiles recently reduced several non-commissioned officers to the ranks.

Rev. Mr. Houston Refuses to be Censured Louisville, Ky., December 23.-Rev. M. H. Houston, who was tried and convicted of hersey, appeared before the Louisville Presbytery this morning ing. Final action was postponed until LUMBAGO. the spring meeting of the Presbytery.

Prosperity comes quickest to the man whose liver is in good condition. De-Witt's Little Early Risers are famous little pills for constipation, billousness, indigestion and all stomach and liver troubles. R. R. Bellamy.

A Half Million Dollar Fire

Cleveland, Ohio, December 23.-Fire broke out in the business centre of the city at 5 o'clock this afternoon and, fanned by a high northwest wind, desion of a large can of bengine in the lithographing establishment of John & Co. in the Power block. Windows were blown out and several employes escaped with difficulty by the fire escapes and a bridge leading to the Wilshire block.

Why allow yourself to be slowly tortured at the stake of disease? Chills and Fever will undermine, and eventually break down the strongest constitution. Febri-Cura (Sweet Chill Tonic with Iron) is more effective than quinnie, and being combined with iron is an excellent Tonic and Nerve medicine. It is pleasant to take, and is sold under positive guarantee to cure or money "just as good" kind don't effect cures. Sold by J. C. Shepard, J. H. Hardin and H. L. Fentress.

Executors' Notice!

THE UNDERSIGNED HAVING THE

day qualified as Executors of the will David G. Worth, deceased, hereby noticy all persons holding claims against said David G. Worth to present the same to them for payment on or before the 100 day of December, A. D., 1898, or this notice will be plead in bar of their recov-

ery. This December 9th, 1897. CHARLES W. WORTH, JAMES S. WORTH, Executors of David G. Worth, Deceased de 10 lw wekly 5w

425 BARRELS & PATENT FLOUR. BARRELS IN & BBL BAGS.

200 BARRELS IN X BBL. BAGS.

BARRELS IN & BEL. BAGS.

BARRELS IN 1-16 BBL. BAGS.

BARRELS BEST PATENT.

BARRELS STRAIGHT FLOUR

BARRELS STRAIGHT IN RACE

IF OUR SALESMEN DO Y TREACH YOU, ASK PR' ES.

W. B. Cooper,

Whole rale Gr

A CHANGE,

WE ADMIT A CHANGE IN THIS SPACE IS NOW IN OR-DER, AS THE PROSPECTS ARE NOT SO BRIGHT AS THEY WERE. WE WILL HFLP YOU OUT IF YOU WILL SEND US YOUR ORDERS FOR

REMEMBER, OUR MOTTO IS TO PLEASE OUR CUSTOMERS.

MCNAIR & PEARSALL



are the ones that will be appreciated and are the most constant reminders of the giver. What could be a more acceptable gift than a nice pair of RUSSELL CAR-VERS or a nice pair of BRASS AND-IRONS? One of our elegant KENEL-

WORTH RAZORS would make the recipient happy. We also have a full line of nice POCKET AND TABLE CUT-FRUIT KNIVES, OYSTER FORKS, Etc. We are headquarters on Healting and Cooking Stoves. Call and examine our PENINSULAR STEEL RANGE, the best made at prices 25 per cent, less than inferior Ranges are sold for. Give us a trial and we will convince

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